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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,015	10/17/2001	Steve Dispensa	1573	5595

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EXAMINER	
MEHRPOUR, NAGHMEH	
ART UNIT	**PAPER NUMBER**
2686	6

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/981,015	DISPENSA ET AL.	
	Examiner	Art Unit	
	Naghmeh Mehrpour	2686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-60 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-60 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 5.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed reference listed in the information Disclosure submitted on 01/30/03 has been considered by the examiner (see attached PTO-1449).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-60, are rejected under 35 U.S.C. 103(a) as being unpatentable over Moura et al. 9US Patent Number 6,411,606 B1) in view of Kieider (US Patent Number 6,154,489)..

Regarding claims 1, 21, 41, Moura teaches a probe device/software for operating a probe device 73 in a broadband wireless system (see figure 4, col 5 lines 27-28, lines 35-43), the probe device 73 (col 8 lines 16-26) comprising:

an interface 75/76 (see figure 4) configured to transfer a message (col 8 lines 30-35, col 5 lines 35-37, lines 65-66); and

receiving a message (73 receiving message from 72 via 76 interface, col 8 lines 11-21, col 2 lines 4-10, col 6 lines 3-10);

a processor connected to the interface 75/76 and configured to receive a

message (col 3 lines 34-45, col 8 lines 11-21), process the message to determine channel information that indicates performance of channels in the broadband wireless system (col 2 lines 58-64, col 15 lines 11-18). Moura teaches a method wherein an upstream channel is shared by a plurality of RLAs in accordance with a credit criterion, and credit control packets are dispatched to a RLA, which permit the RLA to send data packets to arbitrary hosts. Upon sending a data packet, the RLA returns the credit control packet to a server containing software including Hybridware.TM. code, which manages data, flows. The Hybridware.TM code or Hybridware.TM server, includes software distributed among data processors in the upstream and downstream routers and elsewhere in the HASPOP, including for example in the network management system (col 3 lines 34-45). FIG. 5 is a flow chart of operation of a two-way cable network, client application 74 sends 100 data to server application 70 in an upstream direction, thereby issuing a connection request. Hybridware.TM. client 73 buffers the data received and checks if it controls an upstream data channel. If it does, then the data is transmitted forthwith. If it doesn't, Hybridware.TM. client 73 queues up the data message and creates 101 a channel request for a particular subchannel within upstream channel 75. Moura does not specifically mentions that the processor store the channel information that indicates the performance of the broadband system in a memory in the probe device. However Kleider teaches a system/method of processing and storing the channel status information that indicates the performance of the channel, in a memory in the probe device (col 7 lines 35-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the above teaching of

Kleider with Moura, in order to develop a network, which combines the flexibility of a full-duplex network with the effectiveness of a broadcast network at a reasonable cost.

Regarding claims 2, 22, 42, Moura teaches a probe device/software 73 wherein the channels are upstream (col 5 lines 43-49).

Regarding claims 3, 23, 43, Moura teaches a probe device/software 73 wherein the channels are downstream (col 5 lines 43-48).

Regarding claims 4, 24, 44, Moura teaches a probe device/software 73 wherein the message is a credit that allows usage of one of the channels (col 14 lines 43-51).

Regarding claims 5, 25, 45, Moura teaches a probe device/software 73 wherein the message indicates a completion of usage of one of the channels (col 2 lines 61-64).

Regarding claims 6, 26, 46, a probe device /software 73 wherein the probe device is connected to a switch in the broadband wireless system. (see figure 1, col 6 lines 18-21).

Regarding claims 7, 27, 47, Moura teaches a probe device/software 73 wherein the probe device is connected to an upstream manager 35 in the broadband wireless system (see figures 2a, 4, col 6 lines 35-43).

Regarding claims 8, 28, 48, Moura teaches a probe device/software 73 wherein the probe device is connected to a downstream manager 34 in the broadband wireless system (see figure 2a, 4, col 6 lines 35-43).

Regarding claims 9, 29, 49, Moura teaches a probe device/software 73 wherein the processor (col 3 lines 40-45) is configured to determine a state of one of the channels (col 2 lines 58-60).

Regarding claims 10, 30, 50, Moura teaches a probe device/software 73 wherein the state is polling (col 2 lines 50-67).

Regarding claims 11, 31, 51, Moura teaches a probe device/software 73 wherein the state is dedicated (col 5 lines 15-24, col 15 lines 34-49).

Regarding claims 12, 32, 52, Moura teaches a probe device/software 73 wherein the state is idle (col 2 lines 58-60).

Regarding claims 13, 33, 53, Moura teaches a probe device/software 73 wherein the processor is configured to determine a time in the state (col 2 lines 61-64).

Regarding claims 14, 34, 54, Moura teaches a probe device/software 73 wherein the processor is configured to monitor to a number of bytes transmitted (col 2 lines 16-24).

Regarding claims 15, 35, 55, Moura teaches a probe device/software 73 wherein the processor is configured to monitor a number of messages transmitted during a state of one of the channels (col 2 lines 16-24).

Regarding claims 16, 36, 56, Moura teaches a probe device/software 73 wherein the channel information comprises a state of one of the channels (col 2 lines 38-60).

Regarding claims 17, 37, 57, Moura teaches a probe device/software 73 wherein the channel information comprises a change in a state of one of the channels (col 2 lines 58-64).

Regarding claims 18, 38, 58, Moura teaches a probe device /software 73 wherein the channel information comprises a number of bytes transmitted (col 2 lines 16-27).

Regarding claims 19, 39, 59, Moura teaches a probe device/software 73 wherein the channel information comprises a number of messages transmitted (col 2 lines 16-27).

Regarding claims 20, 40, 60, Moura teaches a probe device/software 73 wherein the channel information comprises a time in a state of one of the channels (col 2 lines 58-61).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Weslek et al. (US Patent 6,240, 097) disclose method and apparatus for data channelization and hardware based network operation and control

Jou (US Patent 6,687,285 B1) disclose method and apparatus for supervising the performance of a quick paging channel in a dual event slotted paging system

Lynn (US Patent Number 6,662009 B2) disclose methods and apparatus for performance testing of cordless telephones

5. .**Any responses to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communications indented for entry)

Or:

(703) 308-6306, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II. 2121 Crystal Drive, Arlington. Va., sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Melody Mehrpour whose telephone number is (703) 308-7159. The examiner can normally be reached on Monday through Thursday (first week of bi-week) and Monday through Friday (second week of bi-week) from 6:30 a.m. to 5:00 p.m.

If attempt to reach the examiner are unsuccessful the examiner's supervisor, Marsha Banks-Harold be reached (703)305-4379.

NM

June 9, 2004

CHARLES APPIAH
PRIMARY EXAMINER